

FEB 05 2020

JAMES N. HATTEN, Clerk
By: *J. Beeson* Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *ex rel.*
DR. ANA MARIA ABREU VELEZ, and
DR. MICHAEL S. HOWARD,

Plaintiffs-Relators,

v.

GILEAD SCIENCES, INC., *et al.*

Defendants.

Civil Action No.
1:19-CV-3299-AT

Filed under seal and *ex parte*

**Memorandum in support of
the United States of America's unopposed *ex parte* application for
extension of time to elect whether to intervene**

The United States of America respectfully submits this memorandum in support of its unopposed *ex parte* application for an order under the False Claims Act, as amended, 31 U.S.C. § 3730(b)(3), for a three-month extension from February 1, 2020, until May 1, 2020, in which to notify this Court of its decision whether to intervene in this *qui tam* action.

For the reasons set forth below, good cause exists to extend the intervention deadline in this case so that the government may continue investigating the

Relators' allegations and then make an informed decision as to whether to intervene in this case. The Relators consent to this request.

Statement of Facts

Relators filed this *qui tam* action pursuant to the False Claims Act, 31 U.S.C. §§ 3729–33. Relators filed the original complaint on July 22, 2019 and served the United States Attorney General (but not the undersigned U.S. Attorney's office, as required by Federal Rule of Civil Procedure 4). After the Court ordered the Relators to complete service, they served the U.S. Attorney on December 3, 2020. The deadline by which the United States may elect whether to intervene was therefore February 1, 2020. That deadline may be extended for "good cause." *See* 31 U.S.C. § 3730(b)(3).¹

In their complaint, Relators allege that Defendants bribed various officials at numerous government agencies as a means of maintaining their illegal monopolies on HIV and hepatitis medications.

¹ The United States apologizes for allowing the deadline to pass. The missed deadline was in part caused by a potential conflict (or appearance of conflict) issue—the originally assigned AUSA's spouse has a professional relationship with one of the defendants—and the deadline passed while these issues were being considered. The case has now been reassigned to the undersigned AUSA, and he will move forward expeditiously with this matter.

The relators filed their complaints *pro se*, which is not permitted under the False Claims Act. This may eventually result in the dismissal of their lawsuit. But first, the United States would like to interview the Relators and give them an opportunity to be heard. The United States also typically gives *pro se* relators an opportunity to obtain counsel before seeking dismissal.

The United States has contacted the Relators and requested dates for a potential interview. That interview will occur within the next month, schedules permitting. If the Court is willing to grant the requested extension, it will give the United States time to complete these interviews. Accordingly, the United States requests an extension of time, for an additional three months, in order to interview the Relators concerning their allegations and then decide how to proceed.

Points and Authorities

The *qui tam* provisions of the False Claims Act allow the Government to seek extensions of the deadline by which it must elect whether to intervene:

(2) The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2).

31 U.S.C. §§ 3730(b)(2) and (3). The statute thus allows the Government time to continue investigating and evaluating a *qui tam* complaint and to reach an informed decision as to whether to intervene in the action. The only requirement is that the Government show good cause for the extension.

As discussed above, good cause exists for the extension so that the Relators can be heard regarding their allegations and so that they can obtain counsel, if they are interested and able to do so. The Relators have consented to the requested extension.

The Government further submits that the Complaint should remain under seal during the extension period, subject to any order by the Court partially lifting the seal. If this case is unsealed before the Government can fully evaluate the allegations in the Complaint, the interests of the Government may be harmed.

Conclusion

For the above reasons, the government respectfully requests that the Court extend by three months the deadline for the government to decide whether to intervene in this action.

This 5th day of February, 2020.

Respectfully submitted,

BYUNG J. PAK
United States Attorney


ANTHONY C. DECINQUE
Assistant United States Attorney

Georgia Bar No. 130906
Anthony.DeCinque@usdoj.gov
600 U.S. Courthouse
75 Ted Turner Drive, S.W.
Atlanta, GA 30303
Ph: (404) 581-6000 Fx: (404) 581-6181

Counsel for the United States of America

Certificate of Compliance

I hereby certify, pursuant to Local Rule 7.1(D), that the above "Memorandum in support of the United States of America's unopposed *ex parte* application for extension of time to elect whether to intervene" was prepared in 13-point, Book Antiqua font.



ANTHONY C. DECINQUE
Assistant United States Attorney